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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term—1959

No. 214

MILLER MUSIC CORPORATION,

Petitioner,

against

CHARLES N. DANIELS, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF

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Opinions Below

The opinion of the United States District Court for the Southern District of New York, Bryan, J. (R. 24-33), is reported at 158 F. Supp. 188. The Court of Appeals for the Second Circuit affirmed the judgment of the District Court upon the opinion of Judge Bryan. The Court of Appeals' *per curiam* decision and the dissenting opinion of Washington, J. (R. 36-39), appear at 265 F. 2d 925.

Jurisdiction

The judgment of the Court of Appeals was entered on April 23, 1959 (R. 40). The petition for a Writ of Certiorari was filed on July 16, 1959, and was granted on October 12, 1959 (R. 41). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254.

Statute Involved

The statutory provision involved is 17 U. S. C. § 24 (former § 23 of the Copyright Act of March 4, 1909, c. 320, 35 Stat. 1075), the pertinent portion of which is, as follows:

“§ 24. DURATION; RENEWAL AND EXTENSION.—The copyright secured by this title shall endure for twenty-eight years from the date of first publication, * * * *And provided further*, That * * * the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: * * *.”

Questions Presented

1. Under the statutory scheme of copyright renewal, as expressed in the statute quoted above, does the *inter vivos* assignment of the author's renewal interest in a copyright vest the renewal rights in his assignee if the author dies prior to the commencement of the 28th year of the original period of copyright?

2. Where an author dies prior to the commencement of the 28th year of the original copyright and is not survived by a widow or children, but does leave a will, does his prior *inter vivos* assignment of the renewal interest defeat the executor's right of renewal for the beneficiaries under the author's will when it is conceded that such an assignment would not defeat the renewal rights of a widow, widower, child or next of kin?

Statement

This is an action for copyright infringement involving conflicting claims of the parties (both music publishers) to ownership of a partial interest in the renewal copyright of a musical composition entitled "Moonlight and Roses (Bring Mem'ries of You)" (R. 2-6).

Both parties moved for summary judgment based on the pleadings, affidavits, and their stipulation of agreed facts (R. 22; 23). The District Court, Bryan, J., denied the motion of petitioner (plaintiff below), granted respondent's motion and rendered judgment on its counterclaim, confirming in respondent all rights in the disputed partial interest in the renewal copyright (R. 34-35; R. 24-33).

The Court of Appeals for the Second Circuit affirmed upon the written opinion of Judge Bryan, Circuit Judge Washington dissenting (R. 36-40).

Prior to January 10, 1925, Ben Black and Charles N. Daniels (also known as Neil Moret) composed "Moonlight and Roses" (R. 6-7). The authors assigned the song and the right to secure a copyright therein to Villa Moret, Inc., a music publisher. Villa Moret secured the copyright on January 10, 1925, and published or licensed the publication of the song for the balance of the original term, which expired on January 9, 1953 (R. 7). Since the original term of copyright expired on January 9, 1953, the 28th year of the original term commenced January 10, 1952.

Ben Black died testate in California on December 26, 1950, prior to the commencement of the last year of the original term of copyright when the right to apply for renewal first accrued. He left no widow or children (R. 8). His will, which was duly admitted to probate in February, 1951, provided for certain specific legacies and bequeathed the residuary estate to his nieces and nephews (R. 19-21):

On October 3, 1946, petitioner entered into an agreement with Ben Black whereby Black assigned to petitioner any and all rights "now possessed or which may at any time or times hereafter be acquired or possessed" by him, as co-author, in the renewal copyrights to 18 compositions, including "Moonlight and Roses", in consideration of petitioner's promise to pay certain royalties and the payment of \$1,000 as an advance against such royalties (R. 7; R. 11-15). When said agreement was executed, Black was not possessed of the right to renew the "Moonlight and Roses" copyright and due to his death prior to January 10, 1952, Black never acquired the right to renew said copyright pursuant to the provision of § 24 of the Copyright Act which grants such right to the author.

On October 14, 1946, petitioner also obtained from the three brothers of Ben Black separate assignments of any interests they might respectively acquire in the renewal copyright of "Moonlight and Roses" or the other 17 songs (R. 8). Since Black left a will designating his nieces and nephews as residuary beneficiaries, his brothers, as his next of kin, never acquired the right to renew the "Moonlight and Roses" copyright.

The agreement between Black and petitioner did not expressly purport to bind Black's testamentary representatives and did not contain any covenant with respect to Black's testamentary dispositions.

The assignments from Black and his brothers to petitioner were recorded in the Copyright Office on October

27, 1946 (R. 8; R. 16-19). The agreements pursuant to which the assignments were obtained provided for payment of royalties, but only with respect to those songs for which petitioner actually acquired the renewal copyright.

On January 16, 1952, the executor of the Estate of Ben Black applied for and obtained a certificate of renewal registration in the copyright in "Moonlight and Roses." On March 24, 1952, as part of its decree of final distribution in the probate of the Ben Black estate, the Superior Court of the State of California in and for the City and County of San Francisco, ordered distribution of the estate's interest in "Moonlight and Roses", including the renewal copyright therein, to the nieces and nephews (R. 9).

Subsequently, under date of May 1, 1952, respondent entered into an agreement with the nieces and nephews, wherein, among other things, they assigned to respondent all of their right, title and interest in "Moonlight and Roses." This agreement was filed in the Copyright Office and also was submitted to and approved by the California Superior Court (R. 9).

Respondent had also acquired, in May, 1947, the renewal copyright interest of Charles N. Daniels, the co-author (R. 9-10). There is no dispute as to respondent's ownership of the Daniels interest, and petitioner challenges only respondent's right to the renewal copyright interest attributable to Ben Black's authorship.

Based upon its acquisition of the Daniels and Ben Black interests, respondent undertook the publication, exploitation and licensing of "Moonlight and Roses" throughout the United States upon the commencement of the renewal copyright term, it being respondent's position that it was the sole owner of the renewal copyright. This action followed.

Summary of Argument

Petitioner's claim to the renewal copyright is based on an assignment made by Ben Black prior to the last year of the 28-year term of the original copyright of "Moonlight and Roses." At the time he executed the assignment, Black did not and could not possess the renewal copyright or the right to apply therefor, since the statute, 17 U. S. C. § 24, provides that such rights exist only during the last year of the original term of copyright.

Accordingly, petitioner obtained only an assignment of a future, *contingent* right, namely, the right to the renewal if Ben Black survived into the 28th year of the original term, when for the first time the right to renewal could vest in him. Black's death prior to the commencement of the 28th year of original copyright defeated petitioner's assignment because the contingency of Black's survival failed, and the rights purportedly conveyed by the assignment never vested.

Petitioner concedes that the right to apply for and obtain a renewal copyright vests in the author's widow and/or child, despite a prior assignment of the kind petitioner obtained, if the author dies prior to the commencement of the last year of the original copyright term and is survived by a widow and/or child. Petitioner also concedes that, if neither the author, nor his widow nor children survive into the last year, and if the author does not leave a will, the renewal right vests in his next of kin despite the author's prior assignment.

Petitioner's argument, in effect, is that the statute creates (or this Court should create) an exception in the case of the renewal by an executor on behalf of the beneficiaries designated in the will, requiring them to be bound by the author's assignment of his expectancy in the renewal copyright, when concededly the author's widow, children, or next of kin are not so bound.

Petitioner's basic contention that the author's executor, "in representing the person of his testator * * * is possessed of the same power that the testator might have exercised if alive," begs the question presented herein. Judge Bryan's opinion stated the issue clearly and definitively:

"The question presented here is whether the assignment of his renewal rights by Ben Black, one of the co-authors of the song, to plaintiff prior to the time when they accrued at the commencement of the last year of the original term of copyright was defeated by the author's death before the period within which renewal could be commenced." (R. 24)

Admittedly an executor may exercise rights which his testator might exercise if alive, with respect to property or property interests owned by the testator. Ben Black, however, never acquired any perfected or vested rights in the renewal copyright; his executor (acting on behalf of Black's nieces and nephews, as the beneficiaries under Black's will) obtained the rights by reason of the separate, independent grant of Congress to executors as a class, contained in 17 U. S. C. § 24. Ben Black's renewal rights, being contingent upon his survival into the 28th year of the original term of copyright, terminated upon his death prior to that time, and petitioner acquired nothing by virtue of its assignment from Black.

I

Ben Black, assigned to petitioner only, a future, contingent interest, a mere expectancy, which failed because of Black's death prior to the 28th year of the original copyright period.

The author, during his lifetime, has only a contingent interest in the renewal rights, a mere possibility of obtaining the renewal copyright which is dependent upon his

survival into the last year of the original copyright term. Prior to that time, the author's interest in the renewal is only an "expectancy"; and that is all that he assigned to petitioner. *DeSylva v. Ballentine*, 351 U. S. 570, 574 (1956); *Rossiter v. Vogel*, 134 F. 2d 908, 911 (2d Cir. 1943).

The opinion of the Court of Appeals for the Second Circuit in *M. Witmark & Sons v. Fred Fisher Music Co., Inc.*, 125 F. 2d 949, 950 (2d Cir. 1942), *aff'd* 318 U. S. 643 (1943), is persuasive on the particular point at issue here. The Court there stated that an author's assignment of his "expectancy" is dependent upon his survival into the final year of the original term, and that, in the event of the author's death prior to the final year, his assignment would not "cut off the rights of renewal extended to the widow, children, executors or next of kin * * *."

This is also the prevailing view among the text writers,* and it is the basis upon which the Courts below held that Ben Black's death prior to the commencement of the 28th year of the original period of copyright terminated his interest in the renewal, making ineffectual the assignment which petitioner acquired from him.

Petitioner concedes that an author's assignment of his expectancy will not affect the grant given by Congress to his widow and children if he does not survive into the 28th year. Similarly, petitioner concedes that, where the author dies intestate prior to the 28th year and there are no widow or children, the next of kin will obtain the renewal copyright free of any claim founded upon an assignment made by the author during his lifetime.

* Ball, *Law of Copyright and Literary Property* 555-56 (1944); Ladas, *International Protection of Literary and Artistic Property* 772-73 (1938); Spring, *Risks and Rights in Publishing, Television, Radio, Motion Pictures, Advertising and The Theater* 95 (2d Ed. 1956).

To our knowledge there is no reported case under our copyright law (and petitioner does not contend to the contrary), in which an assignee prevailed on the basis of an *inter vivos* assignment of renewal rights by an author who failed to survive into the final year of the original term of copyright.

Respondent's position is not based upon the premise that the assignment by Ben Black to petitioner was not a valid assignment. Neither is that the premise upon which the Courts below found for respondent. The decisions below rest upon the proposition that, even if the assignment were valid, it gave nothing to petitioner because it was an assignment of a contingent, future interest which never vested in the assignor:

“[A]n author's assignment of his renewal rights *in futuro* can effectively transfer such rights to the assignee only if the author survives until the commencement of the twenty-eight, or last, year of the original term. If the author survives he becomes vested with an absolute power to renew under the statute, and the prior contingent assignment in turn vests such renewal rights in the assignee. On the other hand, if the author fails to survive he has never become vested with any rights of renewal, such rights by statute have been vested *eo nomine* in his widow, child, executor or next of kin, as the case may be, and there is nothing which can pass by virtue of the assignment.” (R. 29)

Nowhere in its brief does petitioner meet, or even come to grips with, this basic proposition, upon which the Courts below resolved this case.

The right of the executor to renew is created by statutory grant which is independent of the grant of renewal rights to the author. The persons for whose benefit the executor acts are entitled to the same protection and benefits as those to which the widow and children would have been entitled had they survived the author.

The right to obtain a renewal copyright and the renewal copyright itself exist as property only by virtue of Section 24 of the Copyright Act. Congress, in creating the right, provided a scheme of successive ownership of the renewal interest which is independent of and different from the general rules governing the devolution of property. The statute, moreover, is not one which prescribes rules for testamentary disposition; instead it creates new and independent rights which are owned by the person or persons it specifies.

Petitioner's contention—that the executor's right of renewal is merely that of his testator's and not of an independent grant—is erroneous. To support this position, petitioner relies heavily on *Fox Film Corporation v. Knowles*, 261 U. S. 326 (1923). We submit that an examination of the facts and the holding of that case fails to justify any such reliance and that the decision below does not in any manner conflict with the decision of this Court in that case.

In the *Fox Film* case, the author died prior to the last year of the original term, leaving no surviving widow or children. His executor subsequently applied for the renewal copyright. It was argued that the executor had no right to apply for and obtain the renewal because the executor could own only what the testator owned, and that the testator owned nothing since he died prior to the 28th year. This Court rejected that contention, and relying,

as respondent does, on the language of Section 24, found that the executor's renewal rights are independent of the author's rights at the time of his death, just as are the renewal rights of the other persons named in the statute. (261 U. S. at 329-30). The opinion of Mr. Justice Holmes remarks that "it is no novelty for [the executor] to be given rights that the testator could not have exercised while he lived."

Petitioner's brief (pp. 8-10) cites and quotes from *Silverman v. Sunrise Pictures Corporation*, 273 Fed. 909 (2d Cir. 1921), cert. denied, 262 U. S. 758 (1923). The decision in that case was prior to and is inconsistent with the decision of this Court in the *Fox Film* case; moreover, in the so-called "second *Silverman* case", the Court firmly adhered to the concept of the independence of the renewal grant to the classes enumerated in the statute. *Silverman v. Sunrise Pictures Corporation*, 290 Fed. 804 (2d Cir. 1923), cert. denied, 262 U. S. 758 (1923).

The opinion of Judge Bryan below, based upon the established concept that the renewal rights of the widow, child, executor, or next of kin exist independently of the author's rights, is consistent with and strongly supported by the rule of the *Fox Film* case.

Equally inappropriate is petitioner's reliance upon *Gibran v. Alfred A. Knopf, Incorporated*, 153 F. Supp. 854 (S. D. N. Y. 1957), *aff'd* 255 F. 2d 121 (2d Cir. 1958), cert. denied, 358 U. S. 828 (1958). There the author, who left neither widow nor children, did leave a will but failed to name an executor, as a result of which administrators c.t.a. were appointed. The contest was between the administrators and the next of kin for the renewal right. It was held (1) that the renewal right vested in the administrators c.t.a. because for all practical purposes they were the equivalent of an executor; and (2) that the renewal right acquired by such legal representative is acquired for the benefit of the persons designated by the testator in his will and not for the benefit of his next of kin.

The language of Judge Weinfeld's opinion (153 F. Supp. at 857-8) is significant in its emphasis on Congressional intent to protect the author's residuary legatees (represented by the executor) in the absence of a widow and/or children:

"The House committee report (also adopted as the Senate committee report) which accompanied the renewal section prior to its enactment by the Congress shows that its purposes were first to protect the author against his own improvident conduct in surrendering renewal rights during the original term; second, to set up a statutory scheme of priority in the renewal rights for the benefit of those naturally dependent upon, and properly expectant of, the author's bounty; and third, to permit the author who had no wife or children to bequeath by will the right to apply for renewal.

To construe 'executors' as used in the statute in the very strict and literal manner urged by the sister would defeat the purpose and intent of Congress to permit an author to bequeath the renewal rights.
• • •

We submit that Congress intended that, if the author is not survived by a widow or children, he be granted a "testamentary power of appointment" so that those persons whom the author regards as proper objects of his bounty are entitled to benefit from the Congressional grant of renewal rights, ahead of the author's next of kin.

Petitioner admits that an author's *inter vivos* assignment will not affect the grant of renewal copyright to his widow and children if he fails to survive into the 28th year of the original term. Similarly, petitioner concedes that where an author dies intestate prior to the commencement of the 28th year, leaving neither widow nor children, the persons who own the renewal interest are the next of kin, as the statute provides, and that a prior assignment made by the author cannot defeat that ownership.

The burden of plaintiff's argument, then, is that this Court should create an exception in the case of an executor, requiring him to be bound by the author's assignment of his expectancy. There is no authority for the creation of such an exception, either in the language of the statute or in any of the cases pertaining to copyright renewals. Under the statute, the right to apply for and obtain the renewal copyright devolved upon the executor, who was obligated to exercise such right for the benefit of Ben Black's nieces and nephews.

As the District Court said:

"The statute does not differentiate between rights which it vests in the widow and the children, the executor and the next of kin successively. There is nothing in the statute indicating that the rights of the executor are any different from those other persons named therein." (R. 29)

In arguing that the decisions below conflict with this Court's ruling in *Fred Fisher Music Co. v. M. Witmark & Sons*, 318 U. S. 643 (1943), petitioner misconstrues both the holding of Judge Bryan's opinion and the reasoning behind it. In *Fisher v. Witmark*, the author survived into the renewal term, having made conflicting assignments of the renewal copyright, one prior to the 28th year of the original term and the other after the renewal right vested. This Court held that the prior assignment prevailed because the Copyright Act does not nullify an agreement by an author, made during the original copyright term, to assign his renewal, where the author survived into the 28th year.

As we have heretofore urged, Judge Bryan's opinion does not invalidate the assignment by Black to petitioner, but holds instead that, by reason of his death prior to the 28th year, Black never acquired any perfected interest in the renewal which could pass by virtue of his assignment. Petitioner's argument that an executor might exercise the same power that the testator could have exercised if he

had been alive does not recognize the underlying concept of Judge Bryan's opinion, which is that the decedent did not own any assignable property, because the contingent future interest granted to him by Congress was terminated by his death prior to the vesting of the right.

Petitioner further maintains that the Courts below erred in finding that executors "take for themselves personally and beneficially". That was not, in any sense, the holding below, and respondent has never maintained that an executor acts for his own benefit or for himself personally. The executor acts to implement the testamentary power of appointment granted the author by Congress, and Judge Bryan held that in so doing, the executor is not bound by the testator's prior assignment of the renewal that he would have owned had he survived into the 28th year of the original term of copyright.

The Court below stated:

"Plaintiff concedes that when an author fails to survive until the commencement of the last year of the original term, any prior assignment by him is void as against the widow, children and next of kin. But it contends that this is not true as to the executor, because an executor stands in the shoes of his testator and is bound to carry out any agreements entered into by the testator during his lifetime. I cannot agree with this contention. The statute does not differentiate between rights which it vests in the widow and children, the executor and the next of kin successively. There is nothing in the statute indicating that the rights of the executor are any different from those of the other persons named therein. The executor's right to renew in the event that neither the author nor his widow and children survive at the commencement of the renewal period is not a derivative right arising under general testamentary law. It is rather a right arising from the statute itself which has created the right in its own express and limited terms. Since, as has been pointed out, no such right exists apart from the statute, the right cannot be taken away unless the statute expressly

so provides. This Congress has not seen fit to do.

• • • This statutory scheme, in derogation of the ordinary law of succession is a further indication that the right of renewal does not belong to the author's estate by right of succession, but belongs only to the appropriate person designated in the statute, in this case the executor, who would in turn be obligated to apply for the renewal and distribute the rights so acquired in accordance with the terms of the will." (R. 29-30)

We submit that Congress, by granting the contingent right to renew to the "next of kin" (a right which cannot be defeated by the author's prior assignment) and by placing the executor ahead of the next of kin in setting forth the hierarchy of persons entitled to renewal rights, evidenced its intent to enable the author to designate by will the persons entitled to receive the renewal rights which Congress created, if there are no surviving widow or children.

III

All assignees of future rights to renewal copyrights accept the risk that the rights acquired from their assignors may not vest because of circumstances which can defeat the expectancy.

The very nature of the statutory grant created by Section 24 of the Copyright Act of an additional renewal term of copyright protection is such that, until the accrual of the renewal right in the 28th year of the original term, the classes named have only an expectancy. Congress has specified which persons shall be entitled to the renewal when the expectancy is perfected upon accrual of the right.

Until accrual of the right in one class or another according to the then existing circumstances, assignees of the renewals from any given person or class of persons take the risk that the rights acquired may never vest.

Petitioner urges that this is inequitable because an executor, who assumes his office only after the testator's death, is the only person who cannot join in a prior assignment. This contention, also made in Judge Washington's dissenting opinion below (R. 39), does not take into account the fact that prior to the 28th year of the original copyright, an assignee of the future right cannot acquire assurance that the rights he has purchased will not be defeated, regardless of the amount of money he is willing to pay and the number of persons from whom he is willing to purchase such contingent future rights. Any one of a great number of circumstances may intervene to nullify the assignment. An assignee can seek to protect the assignment of renewal rights from a married author by making a payment to his wife for her concurrent assignment; however, prior to the author's death and the vesting of the renewal rights, a divorce and subsequent remarriage may intervene. Without question, had Ben Black married subsequent to his agreement with petitioner, and his wife survived into the 28th year, neither petitioner's assignments nor those obtained by respondent would have conveyed any rights whatever.

A person acquiring assignments of the future contingent renewal rights from the children of an author may have to face the contingency that the author may sire additional children. In the instant case, petitioner obtained assignments from Ben Black's brothers upon the assumption that they would continue to be Black's next of kin at the time the renewal rights vested; it is obvious, however, that in many cases the persons who constitute the next of kin for renewal purposes cannot be determined until after the author's death and the commencement of the 28th year of the original term of copyright.

We submit that it is therefore erroneous to say that the executor is "the only person who can absolutely defeat the right of the prior assignee." If an assignment of renewal rights is obtained prior to the vesting thereof, the assignee's rights can be and often are defeated by the

application of the language of the statute to changing and unpredictable circumstances.

In the instant case, the Courts below considered the argument that it might seem "incongruous" to allow an author who has no widow or children to defeat his prior assignment by leaving a will. As Judge Bryan said, this is an argument which should be addressed to Congress, not the Courts, "[f]or there is nothing in the language used by Congress which permits a contrary conclusion" [R. 32].

We think it obvious that an assignee of any contingent future interest must necessarily take the gamble that the condition precedent to the vesting of such future interest may well not occur. The price paid for the assignment of a contingent, future right to the renewal copyright would vary as a result of many factors, including the age and health of the people involved. It seems entirely probable that plaintiff agreed to pay the relatively small sum of \$1,000 for the future renewal rights of 18 songs (and conditioned its agreement to pay royalties upon its actual acquisition of Ben Black's interest in the renewal copyrights) because it recognized the contingent nature of the rights acquired.

We therefore submit that petitioner knew, or should be charged with the knowledge, of the risks it was taking when it acquired Ben Black's contingent future right to renew the copyright in "Moonlight and Roses." Recognizing these risks, it to some extent attempted to fill the gaps by obtaining assignments from Black's brothers. However, petitioner in any event could not have assurance that it would acquire the renewal copyright because of possible changes in circumstances as to what persons will constitute the widow and/or children of the author.

IV

Insofar as petitioner claims the renewal copyright interest as a person entitled to distribution of the assets of Ben Black's estate, the California decree of final distribution to respondent's assignors is conclusive.

The opinion of Judge Bryan, adopted by the Court below, concludes that, under California law, "one who claims as a stranger to the estate or adversely to the estate rather than as an heir, devisee or legatee, will not be bound by a decree of distribution since the jurisdiction of the probate court is limited to rights granted in privity with the estate and does not extend to the rights or titles of adverse claimants" (R. 27).

Although we acquiesce in this statement of California law, we believe that Judge Bryan misconstrued our contention with respect thereto.

Petitioner seems to imply, and Judge Washington's dissenting opinion below seems to adopt, the position that petitioner's agreement with Ben Black, dated October 3, 1946, was tantamount to a contract which required Ben Black to designate petitioner as the beneficiary of his will as to the renewal copyrights. In its complaint, petitioner went further, and alleged that Black "bequeathed by Will" the right of his executor "to apply for the renewal of said copyright in said musical composition for and on behalf of plaintiff" (R. 3).

While petitioner has apparently abandoned this latter position, it is clear that petitioner, as a devisee rather than a stranger to the estate, would be bound by the decree of distribution.

As to the former contention, that an agreement to bequeath the renewal rights was involved, we submit that neither the District Court's opinion nor its order and judgment makes any findings in support thereof. Nor has the

validity or enforceability of such a contract been briefed or argued. To the extent indicated, it should be determined by the law of the deceased author's domicile. See *DeSylva v. Ballentine*, 351 U. S. 570, 580-82 (1956).

Conclusion

The assignment from Ben Black to petitioner, being of a contingent, expectant interest in the renewal copyright, failed by reason of the author's death prior to the commencement of the final year of the original term of copyright. The author's executor renewed the copyright under an independent grant from Congress to executors as a class. The statute does not distinguish between (1) the widow, children and next of kin, who take the renewal free of any assignment by the author during his lifetime, and (2) the persons for whose benefit the executor acts. The judgment of the Court below should accordingly be affirmed.

Insofar as the Court may find petitioner was a party interested in Ben Black's estate, the cause must be remanded for further proceedings in the District Court.

Respectfully submitted,

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